

# Rules of Department of Economic Development

## Division 240—Public Service Commission Chapter 2—Practice and Procedure

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**Title 4—DEPARTMENT OF  
ECONOMIC DEVELOPMENT  
Division 240—Public Service  
Commission**

**Chapter 2—Practice and Procedure**

**4 CSR 240-2.010 Definitions**

*PURPOSE: This rule defines terms used in the rules comprising Chapter 2, Practice and Procedure, and supplements those definitions found in Chapter 386 of the Missouri Revised Statutes.*

(1) Applicant means any person, corporation, municipality, political subdivision or public utility on whose behalf an application is made before the commission.

(2) Commission means the Missouri Public Service Commission as created by Chapter 386 of the *Missouri Revised Statutes*.

(3) Commissioner means one (1) of the members of the commission.

(4) Commission staff means all personnel employed by the commission whether on a permanent or contractual basis who are not attorneys in the general counsel's office, who are not members of the commission's research department, or who are not law judges.

(5) Complainant means the commission, any person, corporation, municipality, political subdivision, the Office of the Public Counsel or public utility who files a complaint with the commission.

(6) Corporation includes a corporation, company, association or joint stock association or company.

(7) General counsel means the attorney who serves as counsel to the commission and includes the general counsel and all other attorneys who serve in the office of the general counsel.

(8) Intervenor means a person, corporation, municipality, political subdivision or public utility which has been granted intervention as a party in a proceeding before the commission.

(9) Participant without intervention means any person, corporation, municipality, political subdivision or public utility allowed by the commission to take part in a proceeding

before it without formal intervention as provided for in 4 CSR 240-2.075.

(10) Party includes any applicant, complainant, petitioner, respondent, intervenor or public utility in proceedings before the commission. Commission staff and the public counsel are also parties unless they file a notice of their intention not to participate within the period of time established for interventions by commission rule or order.

(11) Person includes an individual, corporation, municipality, political subdivision and a partnership.

(12) Pleading means any application, complaint, petition, answer, motion or other similar written document, which is not a tariff or correspondence, and which is filed with the commission in a docketed case. A brief is not a pleading under this definition.

(13) Presiding officer means a commissioner or a law judge licensed to practice law in the state of Missouri and appointed by the commission to preside over matters pending before the commission.

(14) Public counsel means the Office of Public Counsel as created by the Omnibus State Reorganization Act of 1974, and includes the assistants who represent the public before the commission.

(15) Public utility includes every common carrier, pipeline corporation, gas corporation, electrical corporation, telecommunications corporation, water corporation, heat or refrigeration corporation, sewer corporation and any joint municipal utility commission pursuant to section 386.020, RSMo regulated by the commission.

(16) Respondent means any person, corporation or public utility subject to regulation by the commission against whom any complaint is filed.

(17) Secretary means the secretary of the commission appointed pursuant to section 386.090, RSMo.

*AUTHORITY: section 386.410, RSMo 1997.\* Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Amended: Filed June 9, 1987, effective Nov. 12, 1987. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Amended: Filed Aug. 17, 1998, effective March 30, 1999.*

*\*Original authority 1939, amended 1947, 1977, 1996.*

**4 CSR 240-2.020 Meetings and Hearings**

*PURPOSE: This rule announces the time and place of meetings and hearings of the Public Service Commission.*

(1) The principal office of the Public Service Commission is located in the Harry S Truman State Office Building, Floor 5A, 301 W. High St., Jefferson City, Missouri. All general inquiries to the commission, cover letters, briefs, and pleadings shall be addressed to the Secretary of the Commission, Missouri Public Service Commission, P.O. Box 360, Jefferson City, MO 65102, unless otherwise ordered by the commission.

(2) Regular meetings for the purpose of conducting public business shall be held by the commission. The time of each meeting and the matters to be discussed shall be posted at the commission offices and shall be available to the public by contacting the commission.

(3) The commission may change the principal office of the commission and may also change the time and place of meetings or hearings of the commission with reasonable prior notice to the public.

*AUTHORITY: section 386.410, RSMo Supp. 1998.\* Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Amended: Filed July 26, 1999, effective Jan. 30, 2000.*

*\*Original authority: 386.410, RSMo 1939, amended 1947, 1977, 1996.*

**4 CSR 240-2.030 Records of the Commission**

*PURPOSE: This rule sets forth the record-keeping requirements of the commission and the availability of these records to the public. Charges for copies are subject to statutory limitations.*

(1) The secretary of the commission shall keep a full and true record of all the proceedings of the commission, of all books, maps, documents and papers ordered filed by the commission, of all orders made by each of the commissioners, and of all orders made by the commission or approved and confirmed by it and ordered filed. In addition,



the secretary of the commission shall maintain a docket of all cases filed and cases set for hearing and shall assign each matter an appropriate case number. These records shall be available for public inspection in the office of the secretary of the commission, during reasonable business hours, Monday through Friday, except for legal holidays. The specific hours the records are available shall be posted at the principal office of the commission.

(2) Copies of records, official documents, pleadings, transcripts, briefs, and orders filed with the commission may be requested from the secretary of the commission. Any such request shall be made in writing. Copies of records, official documents, pleadings, transcripts, briefs, and orders furnished to public officers for use in their official capacity may be provided without charge. Copies shall be provided to all others as follows:

- (A) Records, official documents, pleadings, briefs, and orders, thirty-five cents (35¢) per page;
- (B) Certificate under seal, one dollar (\$1);
- (C) Transmittal by facsimile device, fifty cents (50¢) per page;

(D) Copies of official transcripts, fifty cents (50¢) per page. A diskette shall be provided upon request with a request for a printed copy of the transcript.

*AUTHORITY: sections 386.300 and 386.410, RSMo Supp. 1998.\* Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Amended: Filed July 26, 1999, effective Jan. 30, 2000.*

*\*Original authority: 386.300, RSMo 1939, amended 1947, 1984, 1995 and 386.410, RSMo 1939, amended 1947, 1977, 1996.*

**4 CSR 240-2.040 Practice Before the Commission**

*PURPOSE: This rule sets forth who may practice as an attorney before the commission.*

(1) Any natural person who files or signs a pleading or brief or other document requesting commission action in a docketed case, or who enters an appearance, for a party, expressly represents that such person is authorized to so act, and that such person is a licensed attorney-at-law in good standing in Missouri or has complied with subsection

(6)(C) below or is appearing on his/her own behalf.

(2) Any representation of a party before the commission shall be deemed the practice of law, as it is defined in section 484.010, RSMo.

(3) Every signature of an attorney which appears upon a pleading, brief or other document shall be immediately followed by that attorney's official address, telephone number and Missouri Bar number. If the attorney is not licensed in Missouri the signature shall be followed by the name of the state in which the attorney is licensed and any identifying number or nomenclature similarly used by the licensing state.

(4) The general counsel represents the staff in investigations, contested cases and other proceedings before the commission and appears for the commission in all courts and before federal regulatory bodies; and in general performs all duties and services as attorney and counsel to the commission which the commission may reasonably require.

(5) The public counsel represents the interests of the public before the commission.

(6) Attorneys who wish to practice before the commission must comply with one (1) of the following criteria:

(A) An attorney who is licensed to practice law in the state of Missouri, and in good standing, may practice before the commission;

(B) A nonresident attorney who is a member of the Missouri Bar in good standing, but who does not maintain an office for the practice of law within the state of Missouri, may appear before the commission as in the case of a resident attorney;

(C) Any attorney who is not a member of the Missouri Bar, but who is a member in good standing of the bar of any court of record may petition the commission for leave to be permitted to appear and participate in a particular case before the commission under all of the following conditions:

1. The visiting attorney shall file in a separate pleading a statement identifying each court of which that attorney is a member and certifying that neither the visiting attorney nor any member of the attorney's firm is disqualified to appear in any of these courts; and

2. The statement shall also designate some member in good standing of the

Missouri Bar having an office within Missouri as associate counsel; and

3. The designated Missouri attorney shall simultaneously enter an appearance as an attorney of record; and

(D) An eligible law student may petition the commission to be allowed to appear before the commission. Such application must comply with Missouri Civil Rule 13.

(7) Practice by Nonattorneys. A natural person may represent him/herself in a docketed case before the commission. Such practice is strictly limited to the appearance of an individual on his/her own behalf and may not be made for any other person or entity.

*AUTHORITY: section 386.410, RSMo 1994.\* Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995.*

*\*Original authority: 386.410, RSMo 1939, amended 1948, 1977.*

*Smith v. Public Service Commission, 336 SW2d 491 (Mo. 1960). Commission Rule 12.07 allowing individual party before commission held not to authorize non-lawyer individual to act as attorney for twenty-five other individuals. See also Reed v. Labor and Industrial Relations, 789 SW2d 19 (Mo. banc 1990) and Clark v. Austin, 340 Mo. 647, 101 SW2d 977 (Mo. 1937).*

**4 CSR 240-2.050 Computation of Effective Dates**

*PURPOSE: This rules sets standards for computation of effective dates of any order or time prescribed by the commission when no specific date is set by commission order.*

(1) In computing any period of time prescribed or allowed by the commission, the day that the commission order is issued is not to be included. The last day of the period shall be included unless it falls on a Saturday, Sunday or legal holiday in which case it is extended to the end of the next working day. This rule does not apply where the commission establishes a specific date by which an action must occur.

(2) When the period of time prescribed or allowed is less than seven (7) days, Saturdays, Sundays or legal holidays falling within the period will be excluded and the period will be

extended accordingly. This rule does not apply where the commission establishes a specific date by which an action must occur.

(3) In computing the effective date of any order of the commission, the order is considered effective at 12:01 a.m. on the effective date designated in the order, whether or not the date is a Saturday, Sunday or legal holiday.

(4) When an act is required or allowed to be done at or within a specific time, with the exception of the operation of law date of suspended tariffs, the commission, at its discretion, may:

(A) Order the period enlarged if a request is made before the expiration of the period originally prescribed or extended by a previous order; or

(B) Permit the act to be done after the expiration of the specified period, except after the effective date of a tariff, where the failure to act was the result of excusable neglect.

*AUTHORITY: section 386.410, RSMo 1994.\* Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov, 7, 1984, effective June 15, 1985. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995.*

*\*Original authority: 386.410, RSMo 1939, amended 1947, 1977.*

#### 4 CSR 240-2.060 Applications

*PURPOSE: Applications to the commission requesting relief under statutory or other authority must meet the requirements set forth in this rule.*

*Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.*

(1) All applications shall comply with the requirements of 4 CSR 240-2.080 and 4 CSR 240-2.040 and shall include the following information:

(A) Legal name of applicant as well as evidence of registration of fictitious name with

the Missouri secretary of state, and street and mailing address of the principal office or place of business of applicant;

(B) A brief statement of the character of business performed by each applicant;

(C) Name, title, address and telephone number of the person to whom correspondence, communications and orders and decision of the commission are to be sent;

(D) Reference to the statutory provision or other authority under which relief is requested;

(E) A clear and concise statement of the relief requested;

(F) All applications shall be subscribed and verified by affidavit under oath by one (1) of the following methods: if an individual, by that individual; if a partnership, by an authorized member of the partnership; if a corporation, by an authorized officer of the corporation; if a municipality or political subdivision, by an authorized officer of the municipality or political subdivision; or by the attorney for the applicant if the application includes or is accompanied by a verified statement that the attorney is so authorized;

(G) An association filing an application shall list all of its members as an attached appendix to the application; and

(H) Attorneys not licensed to practice law in Missouri must comply with 4 CSR 240-2.040 when they file applications or pleadings.

(2) Applications for a certificate of convenience and necessity by a gas, electric, water, sewer or heating company shall include the following information:

(A) If the applicant is a Missouri corporation, a certified copy of the Articles of Incorporation and Certificate of Incorporation from the secretary of state;

(B) If the applicant is not a Missouri corporation, a certificate from the secretary of state that it is authorized to do business in Missouri;

(C) If the applicant is a partnership, a copy of the partnership agreement;

(D) If the applicant does business under a fictitious name, a copy of the registration of the fictitious name with the secretary of state;

(E) If the applicant has submitted the applicable information as set forth in subsections (2)(A)–(D) of this rule in a previous application, the same may be incorporated by

reference to the case number in which the information was furnished;

(F) If the application is for a service area:

1. A statement as to the same or similar utility service, regulated and nonregulated, available in the area requested;

2. If there are ten (10) or more residents or landowners, the name and address of no fewer than ten (10) persons residing in the proposed service area or of no fewer than ten (10) landowners in the event there are no residences in the area, or, if there are fewer than ten (10) residents or landowners, the name and address of all residents and landowners;

3. The metes and bounds description of the area to be certificated;

4. A plat drawn to a scale of one-half inch (1/2") to the mile on maps comparable to county highway maps issued by the Missouri Highways and Transportation Department or a plat drawn to a scale of two thousand feet (2,000') to the inch; and

5. A feasibility study containing plans and specifications for the utility system and estimated cost of the construction of the utility system during the first three (3) years of construction; plans for financing; proposed rates and charges and an estimate of the number of customers, revenues and expenses during the first three (3) years of operations;

(G) Applications for electrical transmission lines, gas transmission lines or electrical production facilities shall include the following information instead of the information required in subsection (2)(F) of this rule:

1. A description of the route of construction and a list of all electric and telephone lines of regulated and nonregulated utilities, railroad tracks or any underground facility, as defined in section 319.015, RSMo, which the proposed construction will cross;

2. The plans and specifications for the complete construction project and estimated cost of the construction project or a statement of the reasons the information is currently unavailable and a date when it will be furnished;

3. Plans for financing;

(H) Evidence of approval of the affected governmental bodies must be provided as follows:

1. When consent by franchise by a city or county is required, approval shall be shown by a certified copy of the document granting the consent or franchise, or an affidavit of the applicant that consent has been acquired; and

2. A certified copy of the required approval of other governmental agencies; and

(I) The facts showing that the granting of the application is required by the public convenience and necessity.

(3) Applications for a certificate of interexchange service authority to provide customer-owned coin telephone (COCT) service shall be filed on the form provided by the commission.

(A) Applications for COCT service shall include:

1. The general area in which service is to be offered;
2. If the applicant is a Missouri corporation, a certified copy of its Certificate of Incorporation from the secretary of state;
3. If the applicant is a foreign corporation, a certified copy of its certificate of authorization to do business in Missouri from the secretary of state;
4. If the applicant is a partnership, a certified copy of the partnership agreement;
5. If the applicant does business under a fictitious name, a certified copy of the registration of the fictitious name with the secretary of state.

(B) Providers of COCT service shall be exempt from the provisions of sections 392.390(1) and (3), RSMo, but shall remain subject to the provisions of section 386.370, RSMo.

(4) Applications for a certificate of service authority to provide telecommunications services, whether interexchange, local exchange or basic local exchange, shall include:

(A) If the applicant is a Missouri corporation, a certified copy of the Articles of Incorporation and Certificate of Incorporation from the secretary of state;

(B) If the applicant is not a Missouri corporation, a certificate from the secretary of state that it is authorized to do business in Missouri;

(C) If the applicant is a partnership, a copy of the partnership agreement;

(D) If the applicant does business under a fictitious name, a copy of the registration of the fictitious name with the secretary of state;

(E) If the applicant has submitted the applicable information as set forth in subsections (4)(A)–(D) of this rule in a previous application, the same may be incorporated by reference to the case number in which the information was furnished;

(F) A request to be classified as a competitive telecommunications company, if applicable, and a description of the types of service the applicant intends to provide;

(G) If the application is for basic local exchange service authority, the applicant shall indicate the exchange(s) in which service is to be offered; and

(H) A proposed tariff with a forty-five (45)-day effective date.

(5) Applications for authority to sell, assign, lease or transfer assets shall include:

(A) A brief description of the property involved in the transaction, including any franchises, permits, operating rights or certificates of convenience and necessity;

(B) A copy of the contract or agreement of sale;

(C) The verification of proper authority by the person signing the application or a certified copy of resolution of the board of directors of each applicant authorizing the proposed action;

(D) The reasons the proposed sale of the assets is not detrimental to the public interest;

(E) If the purchaser is subject to the jurisdiction of the commission, a balance sheet and income statement with adjustments showing the results of the acquisitions of the property;

(F) If the purchaser is not subject to the jurisdiction of the commission, but will be subject to the commission's jurisdiction after the sale, the purchase must comply with 4 CSR 240-2.060(2) or (4);

(G) For gas, electrical, telecommunications, water and sewer companies, a statement of the impact, if any, the sale, assignment, lease or transfer of assets will have on the tax revenues of the political subdivisions in which any structures, facilities or equipment of the companies involved in that sale are located; and

(H) Competitive telecommunications companies are exempt from subsections (5)(A)–(E) of this rule; however, they must file a pleading indicating which company will be holding the certificate of service authority and providing service to Missouri customers, the tariff under which service will be provided and whether the purchaser has any pending or final judgments or decisions against it from any state or federal agency which involve customer service or rates.

(6) Applications for authority to merge or consolidate shall include:

(A) A copy of the proposed plan and agreement of corporate merger and consolidation;

(B) A certified copy of the resolution of the board of directors of each applicant authorizing the proposed merger and consolidation;

(C) The balance sheets and income statements of each applicant and a balance sheet and income statement of the surviving corporation;

(D) The reasons the proposed merger is not detrimental to the public interest;

(E) An estimate of the impact of the merger on the company's Missouri jurisdictional operations and a list of all documents generated relative to the analysis of the merger and acquisition in question;

(F) If the purchaser is not subject to the jurisdiction of the commission, but will be subject to the commission's jurisdiction after the sale, the purchase must comply with 4 CSR 240-2.060(2) or (4);

(G) For gas, electrical, water, sewer and telecommunications companies, a statement of the impact, if any, the merger or consolidation will have on the tax revenues of the political subdivision in which any structures, facilities or equipment of the companies involved are located; and

(H) Competitive telecommunications companies are not required to comply with subsections (6)(A)–(E) of this rule but they must file a pleading indicating what company will be holding the certificate of service authority and providing service to Missouri customers, the tariff under which service will be provided, and whether the remaining company has either pending or final decisions or judgments against it from any state or federal agency involving service to customers or rates charged.

(7) Applications for gas storage companies for authority to acquire property through eminent domain proceedings shall include:

(A) The metes and bounds description of the areas to be acquired;

(B) A map showing the areas to be acquired;

(C) Names and addresses of all persons who may have any legal or equitable title of record in the property to be acquired; and

(D) The reasons it is necessary to acquire the property and why it is in the public interest.

(8) Applications for authority to issue stock, bonds, notes and other evidences of indebtedness shall contain the following:

(A) A brief description of the securities which applicant desires to issue;

(B) A statement of the purpose for which the securities are to be issued and the use of the proceeds;

(C) Copies of executed instruments defining the terms of the proposed securities—

1. If these instruments have been previously filed with the commission, a reference to the case number in which the instruments were furnished;

2. If these instruments have not been executed at the time of filing, a statement of the general terms and conditions to be contained in the instruments which are proposed to be executed; and

3. If none of these instruments is either executed or to be executed, a statement of how the securities are to be sold;

(D) A certified copy of resolutions of the directors of applicant authorizing the issuance of the securities;

(E) A balance sheet and income statement with adjustments showing the effects of the issuance of the proposed securities upon—

1. Bonded and other indebtedness;

2. Stock authorized and outstanding;

(F) If any of the items required in section (6) are unavailable at the time the application is filed, they shall be furnished prior to the granting of the authority sought;

(G) A statement of what portion of the issue is subject to the fee schedule in section 386.300, RSMo;

(H) A five (5)-year capitalization expenditure schedule as required by section 392.310 or 393.200, RSMo; and

(I) Competitive telecommunications companies subject to commission jurisdiction pursuant to section 392.290, RSMo, are exempt from the filing requirements of subsections (8)(C)—(F) and (H) above.

(9) Applications for authority to acquire the stock of a public utility shall include:

(A) A statement of the offer to purchase stock of the public utility or a copy of any agreement entered with shareholders to purchase stock;

(B) A certified copy of the resolution of the directors of applicant authorizing the acquisition of the stock; and

(C) Reasons why the proposed acquisition of the stock of the public utility is not detrimental to the public interest.

(10) Applications for commission approval of territorial agreements shall include:

(A) If the applicant is a Missouri corporation, a certified copy of the Articles of Incorporation and a Certificate of Incorporation from the secretary of state;

(B) If the applicant is not a Missouri corporation, a certificate from the secretary of state that it is authorized to do business in Missouri;

(C) If the applicant is a partnership, a copy of the partnership agreement;

(D) If the applicant does business under a fictitious name, a copy of the registration of the fictitious name with the secretary of state;

(E) If the applicant has submitted the applicable information as set forth in subsections (10)(A)—(D) of this rule in a previous application, the same may be incorporated by reference to the case number in which the information was furnished;

(F) A copy of the territorial agreement and a specific designation of the boundary, including metes and bounds description;

(G) An illustrative tariff which would reflect any changes in a regulated utility's operations or certification;

(H) An explanation as to why the territorial agreement is in the public interest;

(I) A list of all persons whose utility service would be changed by the agreement; and

(J) A check for fees required by Chapters 4 CSR 240-21 and 4 CSR 240-51.

(11) Applications for variances from commission rules and tariff provisions shall contain information as follows:

(A) If the applicant is a Missouri corporation, a certified copy of the Articles of Incorporation from the secretary of state;

(B) If the applicant is not a Missouri corporation, a certificate from the secretary of state that it is authorized to do business in Missouri;

(C) If the applicant is a partnership, a copy of the partnership agreement;

(D) If the applicant does business under a fictitious name, a copy of the registration of the fictitious name with the secretary of state;

(E) If the applicant has submitted the applicable information as required by subsections (11)(A)—(D) of this rule in a previous application, the same may be incorporated by reference to the case number in which the information was furnished;

(F) All applications for variance shall state specifically from which statute, rule or tariff the variance is sought. All applications shall also describe the reason for the proposed variance and shall provide the name of any public utility affected by the variance; and

(G) A complete justification setting out the good cause for granting the variance.

(12) Applications for commission authority for a change of electrical suppliers shall include:

(A) The name, street address, and phone number of the applicant;

(B) A description of the structure where the change of supplier is sought, and the street address of the structure, if different from the applicant's street address;

(C) The name and address of the electrical supplier currently providing service to the structure;

(D) The name and address of the electrical supplier to which the applicant wishes to change;

(E) The applicant's reasons for seeking a change of supplier;

(F) If the applicant's reasons involve service problems, a description of the problems and dates of occurrence, if known;

(G) If the applicant's reasons involve service problems, what contacts applicant has had with the current supplier regarding the problems, if any, and what efforts the current supplier has made to solve the problems, if any;

(H) Why the applicant believes a change of electrical suppliers is in the public interest; and

(I) If the current electrical supplier and the requested electrical supplier agree to the requested change, the applicant shall file a verified statement for each supplier with the application, indicating agreement.

*AUTHORITY: section 386.410, RSMo 1994. \*Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Amended: Filed Sept. 6, 1985, effective Dec. 15, 1985. Amended: Filed Feb. 3, 1987, effective May 1, 1987. Amended: Filed May 11, 1988, effective Aug. 11, 1988. Amended: Filed Feb. 5, 1993, effective Oct. 10, 1993. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995.*

*\*Original authority: 386.410, RSMo 1939, amended 1947, 1977.*

*State ex rel. Kansas City Transit, Inc. v. Public Service Commission, 406 SW2d 5 (Mo banc 1966). Commission is an administrative body of powers limited to those expressly granted by statute or necessary or proper to effectuate statutory purpose. Commission's authority to regulate does not include right to dictate manner in which company conducts its business.*

#### **4 CSR 240-2.065 Tariff Filings Which Create Docketed Cases**

*PURPOSE: This rule establishes when a docketed case will be established for a tariff.*

(1) When a public utility regulated by the commission submits a tariff which proposes a general increase in a company's revenues, the commission shall establish a case file for the tariffs and file the tariffs in the case file. All pleadings and letters regarding the tariffs shall be filed in the case file established for the tariffs. The tariffs submitted shall be in compliance with the provisions of the rules relating to the separate utilities: electric, 4 CSR 240-20.010; telecommunications, 4 CSR 240-30.010; gas, 4 CSR 240-40.010; water, 4 CSR 240-50.010; and sewer, 4 CSR 240-60.030. Tariffs filed which propose a general increase in a company's revenues shall also comply with the provisions of 4 CSR 240-10.070.

(2) When a public utility regulated by the Public Service Commission submits a tariff for commission approval but requests the tariff become effective in less than thirty (30) days, the commission shall establish a case file for the tariff and file the tariff in the case file. All pleadings and orders shall be filed in the case file established for the tariffs. The request for less than thirty (30)-day approval must state good cause for such treatment.

(3) When a pleading, which objects to a tariff or requests the suspension of a tariff, is filed with the commission, the commission shall establish a case file for the tariff and shall file the tariff and pleading in that case file. All subsequent pleadings and orders concerning the tariff shall be filed in the case file established for the tariff.

(4) A docketed case will not be established to consider tariff sheets submitted by a regulated utility which do not meet the circumstances of sections (1)–(3) of this rule except that a docket will be established when tariff sheets are suspended by the commission on its own motion or, when suspended, upon the recommendation of staff.

*AUTHORITY: section 386.410, RSMo 1994. \* Original rule filed March 10, 1995, effective Nov. 30, 1995.*

*\*Original authority: 386.410, RSMo 1939, amended 1947, 1977.*

**4 CSR 240-2.070 Complaints**

*PURPOSE: This rule establishes the procedures for filing formal and informal complaints with the commission.*

(1) The commission, the public counsel, or any person or public utility as defined in 4 CSR 240-2.010 who feels aggrieved by a violation of any statute, rule, order or decision within the commission's jurisdiction may file a complaint. The aggrieved party, or complainant, has the option to file either an informal or a formal complaint.

(2) **Informal Complaints.** To file an informal complaint, the complainant shall state, either in writing, by telephone (consumer services hotline—1-800-392-4211, or TDD hotline—1-800-829-7541), or in person at the commission's offices—

(A) The name, street address and telephone number of each complainant and, if one (1) person asserts authority to act on behalf of the others, the source of that authority;

(B) The address where the utility service was rendered;

(C) The name and address of the party against whom the complaint is filed;

(D) The nature of the complaint, and the complainant's interest therein;

(E) The relief requested;

(F) The measures taken by the complainant to resolve the complaint; and

(G) If a complainant is not satisfied with the outcome of the informal complaint, a formal complaint may be filed.

(3) **Formal Complaints.** Formal complaint may be made by the commission on its own motion, by its general counsel or by the public counsel, or by any person as defined in 4 CSR 240-2.010, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any person, corporation or public utility, including any rule or charge established or fixed by or for any person, corporation or public utility, in violation or claimed to be in violation of any provision of law or of any rule or order or decision of the commission; provided, that no complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any public utility unless the complaint is signed by the public counsel, the mayor or the president or chairman of the board of aldermen or a majority of the council or other legislative body of any town, village, county or other political subdivision, within which the alleged violation occurred, or not less than twenty-five (25) consumers or purchasers or prospective consumers or purchasers of public utility gas, electricity, water, sewer or telephone service as provided by law. Any public

utility has the right to file a formal complaint on any of the grounds upon which complaints are allowed to be filed by other persons and the same procedure shall be followed as in other cases.

(4) The commission shall not be required to dismiss any complaint because of the absence of direct damage to the complainant.

(5) The complaint shall contain the following information:

(A) The name, street address, signature and telephone number of each complainant and, if different, the address where the subject utility service was rendered;

(B) The name and address of the person, corporation or public utility against whom the complaint is being filed;

(C) The nature of the complaint and the complainant's interest in the complaint, in a clear and concise manner;

(D) The relief requested and a statement as to whether the complainant has directly contacted the person, corporation or public utility about which complaint is being made;

(E) The jurisdiction of the commission over the subject matter of the complaint; and

(F) An association filing a formal complaint shall list all of its members as an appendix to the complaint.

(6) The commission, without argument and without hearing, may dismiss a complaint for failure to state facts upon which relief can be granted or may strike irrelevant allegations.

(7) Upon the filing of a complaint in substantial compliance with these rules, the secretary shall serve by certified mail, postage prepaid, a copy of the complaint upon the person, corporation or public utility against whom the complaint has been filed, which will be accompanied by a notice that the matter complained of be satisfied or that the complaint be answered by the respondent, unless otherwise ordered, within thirty (30) days of the date of the notice.

(8) The respondent shall file an answer to the complaint within the time provided. All grounds of defense, both of law and of fact, shall be raised in the answer. If the respondent has no information or belief upon the subject sufficient to enable the respondent to answer an allegation of the complaint, the respondent may so state in the answer and assert a denial upon that ground.

(9) If the respondent in a complaint case fails to file a timely answer, the complainant's averments shall be deemed admitted unless good cause is found by the commission to extend the filing date of the answer.

(10) The commission may order, at any time after the filing of a complaint, an investigation by its staff as to the cause of the complaint. The staff shall file a report of its findings with the commission and all parties to the complaint case. The investigative report shall not be made public unless released in accordance with section 386.480, 392.210(2) or 393.140(3), RSMo, or during the course of the hearing involving the complaint.

(11) When the commission determines a hearing should be held, the commission shall fix the time and place that a hearing will be had upon the complaint and shall serve notice upon the affected person, corporation or public utility not fewer than ten (10) days before the time set for the hearing, unless the commission shall find the public necessity requires that the hearing be held at an earlier date.

(12) All matters upon which a complaint may be founded may be joined in one (1) hearing and no motion for dismissal shall be entertained against a complainant for misjoinder of causes of action or grievances or misjoinder or nonjoinder of parties.

(13) Formal complaints must comply with the filing requirements of 4 CSR 240-2.080 and 4 CSR 240-2.040.

*AUTHORITY: section 386.410, RSMo 1994. \* Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Amended: Filed June 9, 1987, effective Nov. 12, 1987. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995.*

*\*Original authority: 386.410, RSMo 1939, amended 1947, 1977.*

#### 4 CSR 240-2.075 Intervention

*PURPOSE: This rule prescribes the procedures by which an individual or entity may intervene in a proceeding or may participate without intervention.*

(1) Applications to intervene in a proceeding shall comply with 4 CSR 240-2.080 and shall be filed within thirty (30) days after the commission issues its order giving notice of the

case, unless otherwise ordered by the commission.

(2) Applications to intervene shall state the applicant's interest in the proceeding and reasons for seeking intervention, and shall state whether the applicant supports or opposes the relief sought.

(3) An association filing on behalf of its members shall file the names of the members as an appendix to the application to intervene.

(4) The commission may permit intervention on a showing that—

(A) The applicant has an interest in the proceeding which is different from that of the general public;

(B) The applicant is a municipality or other political subdivision;

(C) Granting the proposed intervention would serve the public interest; or

(D) Applications to intervene filed after the intervention date set by the commission may be granted upon a showing of good cause.

(5) Participation without intervention may be permitted where the persons requesting to participate—

(A) Make full disclosure of their interests in the proceeding;

(B) Make a full statement of the position they intend to take in the proceeding;

(C) Make contentions which are reasonably relevant to the issues already presented; and

(D) Make a written request to participate without intervention or enter an appearance at the hearing.

(6) A person who becomes a participant under section (4) is not entitled to any affirmative relief. Participation shall be to the degree permitted by the presiding officer.

*AUTHORITY: section 386.410, RSMo 1994. \* Original rule filed March 10, 1995, effective Nov. 30, 1995.*

*\*Original authority: 386.410, RSMo 1939, amended 1947, 1977.*

#### 4 CSR 240-2.080 Pleadings

*PURPOSE: This rule prescribes the content and procedure for filing pleadings before the commission.*

(1) Any person filing a pleading as defined by 4 CSR 240-2.010(13) or a brief with the commission shall file with the secretary of the commission one (1) original or duplicate original and fourteen (14) copies of the pleading.

(2) Each pleading shall be accompanied by a cover letter which states the subject matter of the pleading being filed. This cover letter shall contain no matter for commission decision.

(3) The commission will not accept for filing facsimile transmissions made directly to the commission. A copy of a facsimile transmission may be utilized when necessary to meet a filing date if it is accompanied by the fourteen (14) copies required by section (1) of this rule. The original or duplicate original must be mailed to the commission by next-day mail to preserve the filing date established by the facsimile transmission copy.

(4) One (1) copy of the pleading or brief and a copy of the cover letter shall be served on the public counsel.

(5) Any person filing a pleading which initiates a formal complaint at the commission or filing a pleading in a formal complaint proceeding shall file one (1) original or duplicate original and ten (10) copies of the pleading with the secretary of the commission unless otherwise ordered by the commission.

(6) The party filing a pleading or brief shall serve each other party a single conformed copy of the pleading or brief and cover letter. Any party may contact the secretary of the commission for the names and addresses of the parties in a case. Service of any pleading or brief may be made by first class mail and a certificate of counsel shall be adequate proof of service. For purposes of this rule, the date of mailing shall constitute the date of service.

(7) The date of filing shall be the date the pleading or brief is stamped filed by the secretary of the commission.

(8) The attorney representing an individual, partnership, corporation, municipality or political subdivision shall sign all pleadings or briefs. If an individual is not represented by an attorney, the individual must sign all pleadings or briefs.

(9) Pleadings and briefs in every instance shall display on the cover or first page the case number and the title of the proceedings before the commission. In the event the title of a proceeding contains more than one (1) name as applicants, complainants or respondents, it shall be sufficient to show only the first of these names as it appears in the first document commencing the proceeding, followed by an appropriate abbreviation (*et al.*) indicating the existence of other parties.

(10) Pleadings and briefs shall be bound at the top or at an edge, shall be typewritten or printed upon eight and one-half inch by eleven inch (8 1/2" x 11") paper. Attachments to pleadings will be referred to as appendices. Appendices shall be annexed and folded to eight and one-half inch by eleven inch (8 1/2" x 11") size whenever practicable. Impression on both sides of the page is encouraged. Impressions shall be double-spaced, except that footnotes and quotations in excess of three (3) lines may be single-spaced. Reproduction of any of these documents may be by any process provided all copies are clear and permanently legible.

(11) Pleadings and briefs which are not in substantial compliance with this rule, applicable statutes or commission orders shall not be accepted for filing. The secretary, after conferring with the presiding officer, may return these pleadings or briefs with a concise explanation of the deficiencies and the reasons for not accepting them for filing. Tendered filings which have been rejected shall not be entered on the commission's docket. The mere act of filing shall not constitute a waiver of any noncompliance with these rules and the commission may require amendment of a pleading or entertain appropriate motions in connection with the pleading.

(12) Parties shall be allowed ten (10) days from the date of filing in which to respond to any motion or other pleading unless otherwise ordered by the commission.

(13) Pleadings or briefs which contain information for which a claim of confidentiality is made must follow procedures established in a protective order approved by the commission. If the pleading which initiates a case contains information deemed to be confidential, then the pleading shall be filed as follows and the party shall request a protective order from the commission:

(A) An original and fourteen (14) copies of the public version of the pleading shall be filed with the information claimed to be confidential redacted; and

(B) The pages containing confidential information shall be placed in a separate envelope. Eight (8) copies of the confidential information shall be filed.

(14) Amendments to applications or other documents which institute a proceeding before the commission and pleading in response may be offered at any time prior to submission of the matter to the commission for its decision.

*AUTHORITY: section 386.410, RSMo 1994. \* Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed May 15, 1980, effective Sept. 12, 1980. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Amended: Filed Sept. 6, 1985, effective Dec. 15, 1985. Amended: Filed Feb. 23, 1990, effective May 24, 1990. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995.*

*\*Original authority: 386.410, RSMo 1939, amended 1947, 1977.*

**4 CSR 240-2.090 Discovery and Prehearings**

*PURPOSE: This rule prescribes the procedures for depositions, written interrogatories, data requests and prehearing conferences.*

(1) Any party, in any proceeding before the commission, may obtain discovery by one (1) or more of the following methods: depositions upon oral examination or written questions, written interrogatories, requests for production of documents or things and requests for admission upon and under the same conditions as in civil actions in the circuit court. Sanctions for abuse of the discovery process or failure to comply with commission orders regarding discovery will be the same as those provided for in the rules of civil procedure.

(2) Parties may use data requests as a means for discovery in proceedings before the commission. The party to whom data requests are presented shall answer the requests within twenty (20) days after receipt unless otherwise agreed by the parties to the data requests. If the recipient objects to data requests or is unable to answer within twenty (20) days, the recipient will serve all of the objections or reasons for its inability to answer in writing upon the requesting party ten (10) days after receipt of the data requests,

unless otherwise ordered by the commission. If the recipient asserts an inability to answer the data requests within the twenty (20)-day time limit, the recipient will include the date it will be able to answer the data requests simultaneously with its reasons for its inability to answer. Upon agreement by the parties or for good cause shown, the time limits may be modified. As used in this rule, the term data request shall mean an informal written request for documents or information which may be transmitted directly between agents or employees of the commission, public counsel or other parties to a proceeding before the commission. Answers to data requests need not be under oath or be in any particular format. Sanctions for failure to answer data requests shall be the same as those provided for abuse of the discovery process in section (1) of this rule.

(3) All prehearing conferences will be held as directed by the commission or presiding officer, with reasonable notice of the prehearing conference time being given to the parties involved.

(4) Any party may petition the commission to hold a prehearing conference at any time prior to the hearing.

(5) If a party does not attend a prehearing conference and is not excused by the commission or presiding officer, the party is subject to dismissal from the case.

(6) Parties may consider procedural and substantive matters at the prehearing conference which may aid in the disposition of the issues in the case. Matters which require a decision may be presented to the presiding officer during the conference.

(7) Facts disclosed in the course of a prehearing conference are privileged and, except by agreement, shall not be used against participating parties before the commission unless fully substantiated by other evidence.

*AUTHORITY: section 386.410, RSMo 1994. \* Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Amended: Filed June 9, 1987, effective Nov. 12, 1987. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995.*

*\*Original authority: 386.410, RSMo 1939, amended 1947, 1977*

**4 CSR 240-2.100 Subpoenas**

*PURPOSE: The commission may issue subpoenas for the production of witnesses and records. This rule prescribes the procedures for requesting and issuing subpoenas.*

(1) A request for a subpoena requiring a person to appear and testify at the taking of a deposition or at a hearing shall be made in writing and shall be directed to the secretary of the commission or a commissioner.

(2) A request for a subpoena *duces tecum* requiring a person to appear and testify at the taking of a deposition or at a hearing and for production of documents or records shall be made in writing, shall specify the particular document or record to be produced, and shall state the reasons why the production is believed to be material and relevant to the proceedings. The request shall be directed to the secretary of the commission or a commissioner.

(3) Except for a showing of good cause, a subpoena will not be issued fewer than twenty (20) days before a hearing.

(4) Objections to a subpoena shall be made within ten (10) days from the date the subpoena is served.

(5) Subpoenas shall be signed and issued by a commissioner or by the secretary of the commission. The name and address of the witness shall be inserted in the original subpoena and a copy of the return shall be filed with the secretary of the commission. Subpoenas shall show at whose instance the subpoena is issued. Subpoena *duces tecum* shall be signed and issued by the commission or by a commissioner. Blank subpoenas shall not be issued.

(6) The commission by its counsel or the party seeking the subpoenas or subpoena *duces tecum* may seek enforcement of same by applying to a judge of the circuit court of the county in which—the hearing has been held; is being held; is scheduled to be held; or the witness resides or may be found, for an order directed to any witness who shall fail to obey a subpoena to show cause why the subpoena should not be enforced.

(7) All subpoenas shall extend to all parts of the state and may be served by any person authorized to serve process in courts of record or by any person of full age designated for that purpose by the commission or by

a commissioner. The person executing any such process and any witness shall receive the fees in the amount and in the manner as provided in civil cases in the circuit courts of this state.

(8) Whenever a subpoena is issued at the instance of a party to any proceeding before the commission, service of the subpoena shall be made by the requesting party and service shall be by a person competent to be a witness. The cost of service and the fee of the witness shall be borne as provided by section 386.440, RSMo.

*AUTHORITY: section 386.410, RSMo 1994. \*Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995.*

*\*Original authority: 386.410, RSMo 1939 amended 1947, 1977.*

**4 CSR 240-2.110 Hearings**

*PURPOSE: This rule prescribes the procedures for the setting, notices, and conduct of hearings.*

(1) The commission shall set a date for hearing after it determines that the issues are adequately defined by the pleadings. Requests for hearing dates should be addressed to the secretary and should be filed at least fifteen (15) days before the requested hearing date. When a party requests a hearing date which is fewer than fifteen (15) days from the time of the request, the requesting party must show good cause for the shortened notice period.

(2) Notice of the day, hour and place of hearing shall be served on the parties by the secretary at least ten (10) days prior to the time set for hearing unless the commission finds that the public necessity requires the hearing to be held on shorter notice.

(A) The secretary shall serve a copy of the notice of hearing upon each party, either by personal delivery or by regular mail.

(B) In all matters which the commission believes to be of general interest to the citizens of a particular community, the secretary shall serve notice of the hearing upon the mayors, the presiding county officials, the local newspapers and members of the general assembly in the affected area.

(C) Whenever it is advisable in the opinion of the commission to order publication of the notice of hearing in one (1) or more newspapers, the commission shall specify the size and duration of this publication, with the costs to be apportioned as directed by the commission.

(3) Once the commission has set a date for hearing concerning a request for a change in any rate of a public utility, the public utility shall give notice to each affected customer. The public utility shall give notice not more than forty-five (45) days, nor less than ten (10) days, before the first day of the local customer hearing or evidentiary hearing, whichever comes first, unless otherwise ordered by the commission. The notice shall include the date, time and place of any local customer hearing and any evidentiary hearing, the proposed rate increase and the approximate percentage of the proposed increase. The utility shall notify affected customers either by an imprint on the bill, in a separate insert accompanying the billing, or in a separate mailing.

(4) The commission or the presiding officer may order continuance of a hearing date for good cause.

(A) When a continuance has been granted at the request of the applicant or complainant, the commission may dismiss the proceeding for failure to prosecute if it has not received a request from the applicant or complainant that the matter be again continued or set for hearing within ninety (90) days from the date of the order granting the continuance.

(B) Failure to appear at a hearing without previously having secured a continuance shall constitute grounds for dismissal of the party's complaint, application or other action unless good cause for the failure to appear is shown.

(5) When actions pending before the commission involve related questions of law or fact, the commission may order a joint hearing of any or all the matters in issue, and may make other orders concerning proceedings before it to avoid unnecessary costs or delay.

(6) The presiding officer may limit the number of witnesses or the time for testimony on a particular issue in order to avoid irrelevant or cumulative evidence.

(7) The order of procedure in hearings before the commission will be as follows, unless otherwise agreed to by the parties or ordered by the presiding officer:

(A) In all proceedings except investigation proceedings, the applicant or complainant shall open and close, with intervenors following the general counsel and the public counsel in introducing evidence;

(B) In investigation proceedings, the general counsel shall open and close; and

(C) In rate cases, the general counsel shall be given the first opportunity to cross-examine.

(8) A reporter appointed by the commission shall make a full and complete record of all proceedings and testimony in any formal hearing before the commission.

(9) Suggested corrections to the transcript of record must be offered within ten (10) days after the transcript is filed in the proceeding except for good cause shown. The suggestions shall be in writing and shall be served upon the presiding officer and each party. Objections to proposed corrections shall be made in writing within ten (10) days after the filing of the suggestions. The commission shall determine what changes, if any, shall be made in the record after a review of the suggested corrections and any objections.

(10) A party may request that the commission reopen a proceeding for the taking of additional evidence if the request is made after the hearing has been concluded, but before briefs have been filed or oral argument presented, or before a decision has been issued in the absence of briefs or argument. Such a request is made by filing with the secretary of the commission a petition to reopen the record for the taking of additional evidence in accordance with 4 CSR 240-2.080, and serving the petition on all other parties. The petition shall specify the facts which allegedly constitute grounds in justification, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing. The petition shall also contain a brief statement of the proposed additional evidence, and an explanation as to why this evidence was not offered during the hearing.

*AUTHORITY: section 386.410, RSMo 1994. \* Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Amended: Filed Sept. 6, 1985, effective Dec. 15, 1985. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995.*

*\*Original authority: 386.410, RSMo 1939, amended 1947, 1977.*

**4 CSR 240-2.115 Nonunanimous Stipulations and Agreements**

*PURPOSE: The commission is charged with the responsibility of prescribing the rules governing all hearings before it. This rule prescribes the proceeding which results when a nonunanimous stipulation and agreement is presented to the commission.*

(1) A nonunanimous stipulation and agreement is defined as any stipulation and agreement which is entered into by less than all parties in a case and where one (1) or more parties requests a hearing of one (1) or more issues. If no party requests a hearing, the commission will treat the stipulation and agreement as a unanimous stipulation and agreement.

(2) Where a hearing is requested by one (1) or more parties, the commission will grant the hearing and will conduct the hearing in accordance with its rules of procedure.

(3) When a nonunanimous stipulation and agreement is executed by the parties, the attorney for the applicant, company or other moving party shall file an original and fourteen (14) copies with the secretary of the commission and serve notice and a copy on all nonsignatory parties. Each party shall then have five (5) days from the receipt of the notice to file a request for hearing with the commission. Failure to file a timely request for hearing shall constitute a full waiver of that party's right to a hearing.

*AUTHORITY: section 386.410, RSMo 1994. \* Original rule filed June 9, 1987, effective Sept. 15, 1987.*

*\*Original authority: 386.410, RSMo 1939, amended 1947, 1977.*

**4 CSR 240-2.116 Dismissal**

*PURPOSE: This rule prescribes the conditions under which an initiating party may voluntarily dismiss a proceeding.*

(1) An applicant or complainant may voluntarily dismiss an application or complaint without an order of the commission at any time before prepared testimony has been filed or oral evidence has been offered by filing a notice of dismissal with the commission and serving a copy on all parties. Once evidence has been offered or prepared testimony filed, an applicant or complainant may dismiss an

action only by leave of the commission, or by written consent of the adverse parties.

(2) Cases before the commission may be dismissed for lack of prosecution if no action has occurred in the case for ninety (90) days and no party has filed a pleading requesting a continuance beyond that time.

*AUTHORITY: section 386.410, RSMo 1994. \* Original rule filed March 10, 1995, effective Nov. 30, 1995.*

*\*Original authority: 386.410, RSMo 1939, amended 1947, 1977.*

**4 CSR 240-2.120 Presiding Officers**

*PURPOSE: This rule states the duties and responsibilities of presiding officers.*

(1) In each case docketed with the commission, the presiding officer is authorized to do the following by express delegation of the commission:

- (A) Approve or suspend tariffs;
- (B) Extend the effective date of any commission order or report and order except the operation of law date of suspended tariffs;
- (C) Change the filing or procedural dates in cases pending before the commission;
- (D) Order utilities to restore service to customers for good cause shown;
- (E) Order utilities not to disconnect service to a customer upon good cause shown;
- (F) Grant applications to intervene;
- (G) Rule on procedural motions;
- (H) Resolve discovery disputes;
- (I) Establish procedural schedules for cases pending before the commission;
- (J) Give notice of cases pending before the commission;
- (K) Give notice of complaints requiring answers;
- (L) Establish protective orders;
- (M) Establish a case;
- (N) Set prehearing conferences;
- (O) Direct calling studies in Community Optional Service (COS) cases;
- (P) Regulate the course of hearing and the conduct of the parties;
- (Q) Require opening statements of counsel;
- (R) Administer oaths and affirmations;
- (S) Receive evidence and rule upon all objections and motions which do not involve final determination of proceedings;
- (T) Hold appropriate conferences before or during hearings;

(U) Order and fix the time for filing of briefs and presentation of oral arguments; and

(V) Take other action as may be necessary and appropriate during a hearing in the discharge of duties consistent with the statutory authority or other authority under which the commission functions and with the rules and policies of the commission.

(2) All delegated authority under section (1) shall be exercised in the name of the Public Service Commission of Missouri and any written order issued under this rule shall be issued over the signature of the secretary and the seal of the Public Service Commission. To exercise the authority under this rule for written orders other than orders-and-notices or orders setting a prehearing conference, orders adopting protective orders, and orders approving tariffs filed in compliance with a commission decision, the presiding officer shall first circulate the proposed order to the commissioners with a notation voting slip. If no commissioner indicates a question or indicates a dissent on the voting slip, the order may be issued by the presiding officer pursuant to this rule. Presiding officers may issue orders approving tariffs involving rates filed in compliance with a commission decision only where the commission has approved the new rates to be charged.

(3) Whenever any party shall deem the presiding officer for any reason to be disqualified to preside, or to continue to preside, in a particular proceeding, the party may file with the secretary of the commission a motion to disqualify with affidavits setting forth the alleged grounds for disqualification. A copy of the motion shall be served by the commission on the presiding officer whose removal is sought and the presiding officer shall have ten (10) days from the date of service within which to reply. The commission shall promptly determine the validity of the grounds alleged, either directly or on the report of another presiding officer appointed to conduct a hearing for that purpose.

(4) A presiding officer shall have the duty to conduct full, fair and impartial hearings, to take appropriate action to avoid unnecessary delay in the disposition of proceedings, to maintain order, and shall possess all powers necessary to that end. The presiding officer may take action as may be necessary and appropriate to the discharge of duties, consistent with the statutory authority or other

authorities under which the commission functions and with the rules and policies of the commission.

(5) Any party aggrieved by a written order issued by a presiding officer under this rule shall be permitted to file a motion for reconsideration, as allowed by 4 CSR 240-2.160.

*AUTHORITY: section 386.410, RSMo 1994.\* Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed June 9, 1987, effective Nov. 12, 1987. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995.*

*\*Original authority: 386.410, RSMo 1939, amended 1947, 1977.*

*Union Electric Co. v. PSC, 591 SW2d 134 (Mo. App. 1979). Prohibition will be under common law rule to disqualify a PSC commissioner who was a party in a case now pending before her.*

#### 4 CSR 240-2.125 Procedures for Use of a Presiding Officer in Settlement Negotiations

*PURPOSE: This rule establishes procedures which will allow parties to utilize a presiding officer in settlement negotiations in order to resolve issues or the entire matter in dispute.*

(1) When the parties to a case before the commission agree that the participation of a presiding officer in the settlement process would be beneficial, those parties shall file a motion for appointment of a settlement officer for that case. The motion shall contain—

(A) A statement that all parties agree to the procedure;

(B) A list of the issues to be addressed or matters the parties wish the presiding officer to aid them in resolving;

(C) If there is no prefiled testimony, a description of the issues of each party; and

(D) A date by which a settlement will be reached or settlement negotiations under this procedure will end.

(2) If the commission grants the motion for a settlement officer, it will issue an order scheduling a settlement conference and will appoint a presiding officer to participate in settlement negotiations. The settlement officer shall not participate in the case in any other role and shall not make any communication regarding the settlement discussions in

the case to the presiding officer appointed to preside over the case.

(3) The negotiations and statements of the parties or attorneys made at the settlement conference will be off the record and will not be made a part of the official case.

(4) If a settlement is not reached before the date specified by the parties in their motion, the procedure will end unless the parties all agree to an extension and the procedure is extended by order of the commission.

*AUTHORITY: section 386.410, RSMo 1994.\* Original rule filed March 10, 1995, effective Nov. 30, 1995.*

*\*Original authority: 386.410, RSMo 1939, amended 1947, 1977.*

#### 4 CSR 240-2.130 Evidence

*PURPOSE: This rule prescribes the rules of evidence in any hearing before the commission.*

(1) In any hearing before the commission, section 536.070, RSMo shall apply, as supplemented by these rules.

(2) If any information contained in a document on file as a public record with the commission is offered in evidence, the document need not be produced as an exhibit unless directed otherwise by the presiding officer, but may be received in evidence by reference, provided that the particular portions of the document are specifically identified and are relevant and material.

(3) The presiding officer shall rule on the admissibility of all evidence. Evidence to which an objection is sustained, at the request of the party seeking to introduce the same or at the instance of the commission, may nevertheless be heard and preserved in the record, together with any cross-examination with respect to the evidence and any rebuttal of the evidence, unless it is wholly irrelevant, repetitious, privileged or unduly long. When objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly. Formal exceptions to rulings are unnecessary and need not be taken.

(4) In extraordinary circumstances where prompt decision by the commission is necessary to promote substantial justice, the presiding officer may refer a matter to the commission for determination during the progress of the hearing.



(5) The rules of privilege shall be effective to the same extent that they are now or may hereafter be in civil actions.

(6) Prepared testimony shall be typed or printed, in black type on white paper eight and one-half inches by eleven inches (8 1/2" x 11"); it shall be double-spaced and pages numbered consecutively at the bottom right-hand corner or bottom center beginning with the first page as page 1; it shall be filed unfolded and stapled together at the top left-hand margin or bound at an edge in booklet form; and it shall be filed in sufficient number of copies as required by order of the commission, observing the following margins: left-hand margin, one inch (1"); top margin, one inch (1"); right-hand margin, one inch (1"); and bottom margin, one inch (1"). Impressions on both sides of the page are encouraged. Exhibits attached to prepared testimony shall be labeled "schedules" and the word schedule and the number of the schedule shall be typed in the lower right-hand margin of the first page of the schedule. All prepared testimony and other exhibits and schedules which are expected to be offered as exhibits shall contain the following information in the following format on the upper right-hand corner of a cover sheet:

Exhibit No. (To be marked by the hearing reporter)  
Issue: (If known at the time of filing)  
Witness: (Full name of witness)  
Type of Exhibit: (Specify whether direct, rebuttal, or other type of exhibit)  
Sponsoring Party: \_\_\_\_\_  
Case No.: \_\_\_\_\_

The prepared testimony of each witness shall be bound and filed separately, or the testimony of several witnesses may be filed in a loose-leaf binder. If the testimony of a witness exceeds fifty (50) pages, it shall be bound separately in booklet form. Prepared testimony shall be filed on line-numbered pages. Testimony which addresses more than one (1) issue shall contain a table of contents.

(7) For purposes of filing prepared testimony, the commission defines direct, rebuttal, and surrebuttal testimony and schedules as follows:

(A) Direct testimony and schedules shall include all testimony and schedules asserting and explaining that party's entire case-in-chief;

(B) Where all parties file direct testimony, rebuttal testimony shall include all testimony and schedules which are responsive to the

testimony and schedules contained in any other party's direct case. A party need not file direct testimony to be able to file rebuttal testimony;

(C) Where only the moving party files direct testimony, rebuttal testimony and schedules shall include all testimony and schedules which explain why a party rejects, disagrees or proposes an alternative to the moving party's direct case; and

(D) Surrebuttal testimony and schedules shall be limited to material which is responsive to matters raised in another party's rebuttal testimony and schedules.

(8) No party shall be permitted to supplement prefiled prepared direct, rebuttal or surrebuttal testimony or schedules unless ordered by the presiding officer or the commission. A party shall not be precluded from having a reasonable opportunity to address matters not previously disclosed which arise at the hearing. This provision does not forbid the filing of supplemental direct testimony for the purpose of replacing projected financial information with actual results.

(9) Any or all parties may file a stipulation as to the facts, in which event the same shall be numbered as a joint exhibit. This stipulation shall not preclude the offering of additional evidence by any party unless otherwise agreed in the stipulation.

(10) Exhibits shall be legible and, unless otherwise authorized by the commission, shall be prepared on standard eight and one-half inch by eleven inch (8 1/2" x 11")-size paper. The sheets of each exhibit should be numbered and rate comparisons and other figures shall be set forth in tabular form.

(11) Exhibits shall be tendered to the reporter at the time of hearing without being prenumbered by the offering party, unless otherwise ordered by the commission.

(12) All exhibits shall be marked at the time of hearing, using a single series of numbers, unless otherwise ordered by the commission.

(13) When exhibits are offered in evidence, the original and two (2) copies shall be furnished to the reporter, and the party offering exhibits should also be prepared to furnish a copy to each commissioner and presiding officer and each party, unless the copies have previously been furnished or the presiding officer directs otherwise.

(14) At the hearing, the presiding officer may require the production of further evidence upon any issue. The presiding officer may authorize the filing of specific evidence as a part of the record within a fixed time after submission, reserving exhibit numbers.

(15) Evidence for which a claim of confidentiality is made shall be filed in conformance with a protective order approved by the commission. Parties shall obtain a protective order prior to filing of documentary evidence.

*AUTHORITY: section 386.410, RSMo 1994. \* Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 6, 1981, effective Feb. 15, 1982. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Amended: Filed June 9, 1987, effective Nov. 12, 1987. Amended: Filed Feb. 23, 1990, effective May 24, 1990. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995.*

*\*Original authority: 386.410, RSMo 1939, amended 1947, 1977.*

*State ex rel. Utility Consumers Council v. Public Service Commission, 562 SW2d 688 (Mo. App. 1978). At a hearing on the issuance of a certificate of convenience and necessity, the commission denied appellant consumers council opportunity to cross-examine electric utility's witnesses on certain testimony regarding costs. The proprietary nature of the cost information involved does not protect it from cross-examination by consumers council, and denial of right to such cross-examination was improper.*

**4 CSR 240-2.140 Briefs and Oral Arguments**

*PURPOSE: This rule sets forth the procedures for filing briefs and presenting oral arguments in any hearing before the commission.*

(1) The commission or presiding officer shall determine whether the parties may file briefs or present oral argument, or both, in any case before the commission.

(2) Unless otherwise ordered by the commission or presiding officer, when briefs are to be filed in any case, the parties shall have twenty (20) days after the date on which the complete transcript of the hearing is filed with the commission to file their initial



briefs. Unless otherwise ordered by the commission or presiding officer, the parties shall have ten (10) days after the filing of the initial briefs to file their reply briefs. When a reply brief is due ten (10) days after filing of initial briefs, the initial briefs shall be sent to all parties by overnight mail or hand-delivered on the day of filing or the next day.

(3) Unless otherwise ordered by the commission or presiding officer, the time allowed for oral argument before the commission shall be—

(A) For an applicant or complainant, thirty (30) minutes, which may be divided between the initial argument and reply argument, but no more than one-third (1/3) of the time shall be consumed by the reply argument; and

(B) For all other parties, a total of fifteen (15) minutes each.

(4) The commission may at its discretion order the parties to file suggested findings of fact, conclusions of law, and ordered paragraphs.

*AUTHORITY: section 386.410, RSMo 1994.\* Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed June 9, 1987, effective Nov. 12, 1987. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995.*

*\*Original authority: 386.410, RSMo 1939, amended 1947, 1977.*

#### 4 CSR 240-2.150 Orders of the Commission

*PURPOSE: This rule prescribes the method of issuing commission orders and the effective date of such orders.*

(1) The record of a proceeding shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument.

(2) The commission's orders shall be in writing and shall be issued as soon as practicable after the record has been submitted for consideration.

(3) Every order of the commission shall be served by mailing a certified copy, with postage prepaid, to all parties of record.

(4) The commission may, at its discretion, issue a preliminary order and allow parties to

provide responses to the preliminary order. Responses to a preliminary order shall be limited to five (5) pages and shall be due five (5) days after the date the preliminary order is issued, unless otherwise ordered by the commission. The commission will then issue its order after reviewing the responses of the parties.

*AUTHORITY: section 386.410, RSMo 1994.\* Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed June 9, 1987, effective Nov. 12, 1987. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995.*

*\*Original authority: 386.410, RSMo 1939, amended 1947, 1977.*

*Am. Petrol. Exchange v. Public Service Commission, 172 SW2d 952, transferred 238 Mo. App. 92, 176 SW2d 533 (Mo. 1943). Commission has no power to declare or enforce any principle of law or equity. Commission cannot determine damages, award pecuniary relief or abate a nuisance.*

#### 4 CSR 240-2.160 Rehearings or Reconsideration

*PURPOSE: This rule prescribes the procedure for requesting a rehearing of a final order of the commission and the disposition of that request.*

(1) Applications for rehearing may be filed prior to the effective date of the order. Motions for reconsideration of procedural and interlocutory orders shall be filed within ten (10) days of the date the order is issued, unless otherwise ordered by the commission. The application shall set forth specifically the ground(s) on which the applicant considers the order to be unlawful, unjust or unreasonable.

(2) The filing of an application for rehearing or motion for reconsideration shall not excuse any party from complying with any order of the commission, nor operate in any manner to stay or postpone the enforcement of any order, unless otherwise ordered by the commission.

(3) The commission shall grant a rehearing or reconsider the order if in its judgment there is sufficient reason to do so. The commission may rehear or reconsider an entire order or any issue within an order. The commission may base a rehearing or reconsideration on

the existing record or may require additional evidence, pleadings or briefs.

(4) The commission, after a rehearing or reconsideration of the evidence, pleadings or briefs, including any additional evidence, pleadings or briefs received since the issuance of the order, may affirm, rescind, or modify the order.

*AUTHORITY: section 386.410, RSMo 1994.\* Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995.*

*\*Original authority: 386.410, RSMo 1939, amended 1947, 1977.*

#### 4 CSR 240-2.170 Forms

*PURPOSE: This rule provides examples of the form and contents of certain types of common filings.*

(1) Applications for certificate of public convenience and necessity shall be filed in accordance with 4 CSR 240-2.060 and Example 1 below.

(2) Applications for permission to sell assets shall be filed in accordance with 4 CSR 240-2.060 and Example 2 below.

(3) Formal complaints shall be filed in accordance with 4 CSR 240-2.070 and Example 3 below.

(4) Subscriptions, verifications, and signatures shall comply with 4 CSR 240-2.080.

(5) Compliance with the provisions of this rule does not render unnecessary compliance with any other applicable commission rule.

#### Example 1

#### BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the matter of the application )  
of Public Utility, Inc., for a )  
certificate of convenience and )  
necessity authorizing it to )  
construct, install, own, operate, )  
control, manage and ) Case No.  
maintain a sewer system for the )  
public located in an unin- )  
corporated area of Any County, )  
Missouri. )



APPLICATION

Comes now Public Utility, Inc. (Applicant), pursuant to section 393.170, RSMo, and states as follows:

1. Applicant has duly organized, operates as a corporation under the laws of the state of Missouri, and maintains its principal office and place of business at 100 Main Street, Anytown, Missouri 11111. It proposes to provide service to the public as a public utility under the jurisdiction of the commission. A copy of its certificate of incorporation and articles of incorporation are attached to this application as Appendix 1.

2. Communications regarding this application shall be made to:

- John Doe, President
Public Utility, Inc.
100 Main Street
Anytown, Missouri 11111
John Smith
Attorney at Law
200 Main Street
Anytown, Missouri 11111

3. Applicant requests a certificate of public convenience and necessity to install, own, acquire, construct, operate, control, manage and maintain a sewer system for the public in an unincorporated area in Any County, Missouri. A map setting forth Applicant's proposed service territory is attached to this application as Appendix 2. A legal description in metes and bounds is attached to this application as Appendix 3.

4. A feasibility study is attached to this application as Appendix 4.

5. There are no municipalities located within the proposed service area. Applicant has complied with all legal requirements of the Any County Court by obtaining a franchise to operate in Any County. A certified copy of the franchise is attached to this application as Appendix 5.

6. Applicant's proposed sewer system meets all requirements of the Commission and the Department of Natural Resources. A copy of the construction permit issued by the Department of Natural Resources is attached to this application as Appendix 6.

7. No other public utilities or governmental bodies provide sewer service within the area Applicant proposes to serve.

8. The area requested is rapidly being developed, and developers are building and planning to build residential homes and other establishments within the area, all of which will need adequate sewer service. Therefore, a public need exists for adequate sewer ser-

vice within the proposed service area, and the public convenience and necessity will be promoted by the granting of the requested certificate.

9. The following ten (10) people reside in the proposed service area (or, are owners of land in the proposed service area, where there are no residences):

Mr. Joseph Davis
101 X Street
Anytown, Missouri 11111

Ms. Jane Cooper
202 Y Street
Anytown, Missouri 11111

WHEREFORE, Applicant requests the commission to grant it a certificate of convenience and necessity authorizing it to install, acquire, build, construct, own, operate, control, manage and maintain a sewer system for the public within the area referred to in paragraph 3 above, and to issue such further orders as the Commission may deem appropriate and proper.

(Signature(s)) (Attorney)
Name
Address
Phone

Example 2

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the matter of the application )
of Public Utility, Inc., to sell )
and transfer its franchise, works )
or system to Public Water ) Case No.
Supply District No. 00 of Any )
County Missouri. )

APPLICATION

Comes now Public Utility, Inc (Utility), pursuant to section 393.190, RSMo, and states as follows:

1. Utility is duly organized, operates as a corporation under the laws of the state of Missouri, and maintains its principal office and place of business at 100 Main Street, Anytown, Missouri 11111. Utility is a water corporation and public utility as defined in section 386.020, RSMo therefore, it is subject to the jurisdiction, supervision, and control of the Commission over the transmission, distribution, and sale of water in Utility's service area in Any County, Missouri.

2. Public Water Supply District No. 00 of Any County, Missouri (District) is a political corporation of the state of Missouri established and existing pursuant to Chapter 247, RSMo. It presently is providing water service in its service area in Any County, Missouri. District's service area includes all of the area presently certificated to Utility.

3. Communications regarding this application should be made to—

John Doe, President
Public Utility, Inc.
200 Main Street
Anytown, Missouri 11111

John Smith
Attorney at Law
200 Main Street
Anytown, Missouri 11111

Michael Johnson, President
Public Water Supply District No. 00
100 Broadway Boulevard
Anytown, Missouri 11111

Mary Jones
Attorney at Law
200 Broadway Boulevard
Anytown, Missouri 11111

4. Utility proposes to sell and transfer, and District proposes to buy, all of Utility's franchise, works or system necessary and useful to provide water service to its customers in Utility's certificated area. These properties are listed in Appendix 1, attached to this application. A copy of the proposed contract and agreement is attached to this application as Appendix 2.

5. A certified copy of the resolutions of the Board of Directors of Utility and the District, authorizing the proposed transaction, are attached to this application as Appendices 3 and 4, respectively.

6. The proposed transaction would not harm the public interest in that (a) Utility does not have the financial ability to continue to expand the system for additional customers, (b) the District has sufficient water supply to take care of the immediate demands of the present and future customers of Utility and (c) the location of the system fits in well with the overall plan of expansion by the District.

7. Customers of Utility will experience higher rates after the transfer. A comparison of the rates of Utility and the District, and a bill comparison for a typical residential customer, are attached to this application as Appendix 5.



8. Any County should experience a loss of tax revenues, as the District does not pay taxes. The change in the amount of tax revenues that Any County should expect is attached to this application as Appendix 6.

9. Upon receipt of the proceeds from this sale, Utility intends to pay out the net proceeds to the shareholders and discontinue the rendition of water service in its certificated area.

WHEREFORE, Utility respectfully requests the Commission to issue an order:

(i) Approving the sale and transfer of all of the franchise, works or system of Utility to the District;

(ii) Authorizing Utility to distribute the proceeds of the sale to the shareholders of Utility;

(iii) Authorizing Utility to discontinue providing water service in its certificated area as of the date of sale and transfer of such properties to the District; and

(iv) For such other relief deemed appropriate and proper to accomplish the purposes of this application.

\_\_\_\_\_  
(Signature(s)) (Attorney)

Name  
Address  
Phone

Example 3

BEFORE THE PUBLIC SERVICE  
COMMISSION  
OF THE STATE OF MISSOURI

John A. Jones, )  
Complainant, ) v. Case No.  
Anytown Telephone Company) )  
a corporation, Respondent. )  
COMPLAINT

Comes now John A. Jones (Complainant), residing on RFD No. 1, Anytown, Missouri 65432, and pursuant to 4 CSR 240-2.070, respectfully state that:

1. Anytown Telephone Company (the Company), a corporation, operates a telephone utility in Anytown, Missouri, under the jurisdiction of the Public Service Commission of the state of Missouri.

2. On July 1, 1973, Complainant John A. Jones applied to the Company for telephone service at his residence located on RFD No. 1, Anytown, Missouri. Complainant resides within the service area of the

Anytown Telephone Company as shown by its exchange area map on file with this Commission. The Company said that it did not have a telephone line sufficiently near the home of the Complainant to serve him, but that the Company planned to serve that area within six to nine months.

3. On March 1, 1974, Complainant applied to the Company at its office in Anytown, Missouri, for telephone service at his residence, and was again advised that no line had yet been constructed near the home of Complainant Jones to serve him, and that it would be a number of months until such could be done.

4. On October 1, 1974, Complainant again went to the Company's office in Anytown, Missouri, and asked about his prospects for receiving telephone service. The Company representative told him that if five or more customers within his immediate neighborhood desired service, the Company could and would build a line to serve those customers; provided that such customers deposited with the Company the amount of money above the amount which the Company would expend for said customers under its extension rule on file with this Commission, based on an estimated cost of construction. During October, 1974, Complainant received a letter from the Company stating the estimated cost of construction, and asking each of the five prospective customers to deposit \$50 with the Company, or a total of \$250, as the excess of cost of construction under its extension rules.

5. Complainant states that he signed the letter and returned it to the office of the Company on November 1, 1974, and asked when the Company would begin providing service. The Company told them that it would probably complete construction around February 1, 1975. Complainant offered to deposit the specified sum of \$250 for the five prospective customers including himself, but the Company said that it did not then require the deposit or that the Company was not then ready to receive it.

6. Complainant states that the Company still refuses to receive the proffered deposit of \$250, and has not yet begun construction of any telephone line to serve him. The Complainant needs telephone service but has not received it, and has exhausted the possibility of securing service by requests directed to the Company.

WHEREFORE, Complainant asks this Commission to order the Company to immediately construct a telephone line from its

present system to provide service to his residence as soon as the \$250 deposit is again proffered to the Company.

Signatures(s) \_\_\_\_\_  
Name  
Address  
Phone

*AUTHORITY: section 386.410, RSMo 1994.\* Original rule filed Dec. 19, 1975, effective Dec. 24, 1975. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995.*

*\*Original authority: 386.410, RSMo 1939, amended 1947, 1977.*

**4 CSR 240-2.180 Rulemaking**

*PURPOSE: This rule provides a procedure for rulemaking, and petitioning for rulemaking, pursuant to Chapter 536, RSMo.*

(1) Promulgation, amendment, or rescission of rules adopted by the commission in Division 240 of Title 4 may be proposed, adopted, and published by approval of the commission as provided by law.

(2) Promulgation, amendment, or rescission of rules may be instituted by the commission through an internally-generated rulemaking proceeding, or pursuant to a rulemaking petition filed with the commission.

(3) Petitions for promulgation, amendment or rescission of rules shall be as follows:

(A) Each petition for promulgation, amendment, or rescission of rules made pursuant to Chapter 536 RSMo, shall be filed with the secretary of the commission in writing and shall include:

1. The name, street address, and mailing address of the petitioner;

2. One (1) of the following:  
A. The full text of the rule sought to be promulgated, if no rule on the subject currently exists;

B. The full text of the rule sought to be amended, including the suggested amendments, if amendment of an existing rule is sought;

C. The full text of the existing rule and the full text of the rule proposed to replace the existing rule, if the proposed changes to the existing rule are so substantial as to make replacement of the existing rule more efficient than amendment thereof; or

D. The full text of the rule sought to be rescinded, if rescission of an existing rule is sought;

3. A statement of petitioner’s reasons in support of the promulgation, amendment, or rescission of the rule, including a statement of all facts pertinent to petitioner’s interest in the matter;

4. Citations of legal authority which authorize, support, or require the rulemaking action requested by the petition;

5. An estimation of the effect of the rulemaking on private persons or entities with respect to required expenditures of money or reductions in income, sufficient to form the basis of a fiscal note as required under Chapter 536, RSMo; and

6. A verification of the petition by the petitioner by oath or affirmation; and

(B) Within thirty (30) days after the rulemaking petition is filed, the commission shall either deny the petition in writing, stating the reasons for its decision, or shall initiate rulemaking in accordance with Chapter 536, RSMo.

(4) When the commission decides to promulgate, amend, or rescind a rule, it shall issue a notice of proposed rulemaking for the secretary of state to publish in the Missouri Register. The notice of proposed rulemaking shall contain the following:

(A) Instructions for the submission of written comments by anyone wishing to file a statement in support of or in opposition to the proposed rulemaking, by a specific date which shall be not less than thirty (30) days after the publication date; or

(B) Instructions and notice for both a written comment period and hearing.

(5) Persons wishing to file comments or testify at the hearing need not be represented by counsel, but may be so represented if they choose.

(6) Hearings on rulemakings may be for commissioner questions or for the taking of initial or reply comments.

(7) Hearings for the taking of initial or reply comments on rulemakings shall proceed as follows:

(A) A commissioner or presiding officer shall conduct the hearing, which shall be transcribed by a reporter;

(B) Persons wishing to testify shall be sworn by oath or affirmation;

(C) Persons testifying may give a statement in support of or in opposition to a pro-

posed rulemaking. The commissioners or the presiding officer may question those persons testifying;

(D) Statements shall first be taken from those supporting a proposed rule, followed by statements from those opposing the rule, unless otherwise directed by the presiding officer; and

(E) Persons testifying may offer exhibits in support of their position.

(8) Within ninety (90) days after the end of a written comment period or the end of a hearing on a rulemaking, the commission shall issue an order of rulemaking which shall be published in the *Missouri Register* by the secretary of state. The order of rulemaking shall briefly summarize the general nature of the comments or statements made during the comment period or hearing, shall contain the findings required by Chapter 536, RSMo and shall either—

(A) Adopt the proposed rule or proposed amendment as set forth in the notice of proposed rulemaking without further change;

(B) Adopt the proposed rule or proposed amendment with further changes;

(C) Adopt the proposed rescission of the existing rule; or

(D) Withdraw the proposed rule.

*AUTHORITY: sections 386.040, 386.250, 386.310, 386.410, 387.050, 387.160, 387.170, 387.230, 387.240, 387.290, 387.310, 387.320, 387.330, 389.580, 389.710, 389.795, 389.945, 389.992, 389.993, 390.041, 390.126, 390.136, 390.138, 392.200, 392.210, 392.220, 392.240, 392.280, 392.290, 392.330, 393.110, 393.140(3), (4), (6), (9), (11) and (12), 393.160, 393.220, 393.240, 393.290 and 394.160, RSMo 1994.\* Original rule filed April 26, 1976, effective Sept. 11, 1976. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995.*

*\*Original authority: Please consult the Missouri Revised Statutes.*

*State ex rel. Southwestern Bell Telephone Co. v. PSC, 592 SW2d 184 (Mo. App. 1979). A declaratory judgment action under section 536.050, RSMo is not available to challenge the validity of a rule of the Public Service Commission, since a specific, exclusive statutory scheme for review of commission actions is contained in section 386.510, RSMo.*

*Jefferson Lines, Inc. v. Missouri Public Service Commission, 581 SW2d 124 (Mo.*

*App. 1979). In 4 CSR 240-2.180 the commission provided by rule a method for attack on any of its own rules. A record could be made and if the commission ruled adversely to the petition, an appeal would lie under section 386.510, RSMo. Also, under section 536.031.5, RSMo this court takes judicial notice of the rules printed in the Code of State Regulations.*

**4 CSR 240-2.190 Hearings Under Rulemaking**

(Rescinded November 30, 1995)

*AUTHORITY: section 386.410, RSMo 1986. Original rule filed Nov. 7, 1984, effective June 15, 1985. Rescinded: Filed March 10, 1995, effective Nov. 30, 1995.*

**4 CSR 240-2.200 Small Company Rate Increase Procedure**

*PURPOSE: This rule provides procedures for small water, sewer and gas utilities to obtain rate increases.*

(1) Small companies, as defined in this rule, may seek a general increase in revenues through a small company rate proceeding by filing a letter requesting the change. The request shall not be accompanied by any tariff sheets. For the purpose of this rule, small companies qualifying to use the small company rate proceeding described in this rule shall include water and sewer utilities having five thousand (5,000) or fewer customers and gas utilities having one thousand five hundred (1,500) or fewer customers. The small company rate proceeding shall be conducted as follows:

(A) The original letter requesting the change shall be filed with the secretary of the commission and one (1) copy shall be furnished to the public counsel. The letter shall state the amount of the additional revenue requested, the reason(s) for the proposed change and a statement that all commission annual assessments have been paid in full or are being paid under an installment plan. The letter should also include a statement that the company’s current annual report is on file with the commission. The company, in writing, shall notify customers of the request for additional revenue and the effect on the typical residential customer’s bill. The notice shall indicate that customers’ responses may

be sent to the appropriate commission department or the public counsel within thirty (30) days of the date shown on the notice. A draft copy of the notice shall be sent to the appropriate commission department for verification of the accuracy of the notice before being sent to the company's customers. A copy of the final notice shall then be sent to the appropriate commission department and the public counsel. The commission staff and the public counsel shall exchange copies of customer responses upon their receipt. Upon receipt of the company's request, the commission staff shall schedule an investigation of the company's operations and an audit of its financial records. When the investigation and audit are complete, the commission staff shall notify the company and public counsel whether the requested additional revenue is recommended in whole or in part, of the rate design proposal for the increase, and of any recommended operational changes. If public counsel wishes to conduct an investigation and audit of the company, it must do so within the same time period as staff's investigation and audit;

(B) The commission staff, within twenty-one (21) days from the completion of its investigation; shall arrange a conference with the company and shall notify the public counsel of the conference prior to the conference, in order to provide the public counsel an opportunity to participate;

(C) If the conference between the commission staff, the company and the public counsel results in an agreement concerning additional revenue requirements and any other matters pertaining to the company's operations, including responses to customer concerns, the agreement shall be reduced to writing. The company may then file tariff sheet(s) with a thirty (30)-day effective date and no additional customer notice or local public hearing shall be required, unless otherwise ordered by the commission. The company shall file a copy of the agreement with its tariff;

(D) If the conference results in an agreement between the commission staff and the company, the company at this time will file the necessary tariff sheet(s) with the commission in accordance with the agreement. The tariff sheet(s) shall contain an effective date of not less than forty-five (45) days from the issue date;

(E) If an agreement is reached between only the commission staff and the company, the company shall notify customers in writing of the proposed rates resulting from the agreement. The notice shall indicate that cus-

tomers' responses may be sent to the appropriate commission department or the public counsel within twenty (20) days of the date shown on the notice. A copy of the notice shall be sent to the secretary of the commission and the public counsel. The commission staff and the public counsel shall exchange copies of the customer responses upon their receipt. The public counsel shall notify the commission staff and the company of its agreement or disagreement with the tariff sheet(s) within twenty-five (25) days of the date the tariff sheet(s) is filed, unless a public hearing is requested;

(F) A request for a local public hearing may be filed with the commission after the tariff sheet(s) is filed by the company. The request shall be filed within twenty (20) days of the filing of the tariff sheet(s) by the company. Public counsel shall notify the commission staff and the company of its agreement or disagreement with the tariff sheet(s) within ten (10) days after the local public hearing;

(G) An agreement must be reached and tariff sheet(s) filed based upon the agreement within one hundred fifty (150) days from the date the letter initiating the procedure is filed with the commission. This time period can be extended by the consent of the parties. Written consent for an extension shall be filed with the company's tariff; and

(H) If no agreement can be reached between the commission staff and the company, the company may initiate a standard rate proceeding.

*AUTHORITY: section 386.410, RSMo 1994. \* Original rule filed March 10, 1995, effective Nov 30, 1995.*

*\*Original authority: 386.410, RSMo 1939, amended 1947, 1977.*